

# EXHIBIT B

SUPREME COURT STATE OF NEW YORK

COUNTY OF WESTCHESTER: COMMERCIAL DIV.

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WHITE PLAINS HEALTHCARE PROPERTIES I,  
LLC,

Plaintiffs,

-against-

Index No.  
60278/20

HBL SNF LLC, et al,

Defendants.

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County Courthouse (Via Teams)  
111 Dr. Martin Luther King Blvd.  
White Plains, N.Y. 10601  
June 30, 2021

B E F O R E:

HON. GRETCHEN WALSH,  
Justice

A P P E A R A N C E S:

DELBELLO DONNELLAN WEINGARTEN WISE & WIEDERKEHR  
Attorneys for Plaintiffs  
One North Lexington Avenue  
White Plains, NY 10601  
BY: ALFRED DONNELLAN, ESQ.  
BY: NELIDA LARA, ESQ.

ABRAMS FENSTERMAN  
Attorneys for Plaintiffs  
81 Main Street  
White Plains, NY 10601  
BY: ROBERT SPOLZINO, ESQ.

MICHELMAN & ROBINSON, LLP  
Attorneys for Defendants HBL SNF, Jozefovic & Neuman  
800 Third Avenue  
New York, NY 10022  
BY: JOHN GIARDINO, ESQ.

WINDELS MARX  
Attorneys for Commercial Metropolitan Bank  
156 West 56 Street  
New York, NY 10019  
BY: ROBERT MALATAK, ESQ.

Elizabeth A. DeMasi  
Senior Court Reporter

1 THE COURT: Good morning.

2 So this is White Plains Health Care Properties  
3 against HBL SNF, LLC.

4 Appearances. Please.

5 MR. DONNELLAN: Alfred Donnellan, Delbello,  
6 Donnellan, Weingarten, Wise & Wiederkehr attorneys for  
7 plaintiff.

8 MS. LARA: Nelida Lara, also Delbello Donnellan and  
9 also for plaintiffs.

10 MR. GIARDINO: John Giardino, Michelman and  
11 Robinson, attorneys for the defendants HBL SNF, Jozefovic  
12 and Neuman.

13 MR. MALATAK: Robert Malatak, Windels Marx Lane &  
14 Mittendorf, counsel for Metropolitan Commercial Bank.

15 THE COURT: Good morning, everybody.

16 So, we are here on the Order to Show Cause filed by  
17 HBL joined by Metropolitan to seek an injunction against the  
18 foreclosure, sale that is scheduled for tomorrow by White  
19 Plains Health Care Properties with regard to Mr. Jozefovic's  
20 70 percent membership interest in another entity called  
21 Waterview.

22 I received a black line recently from Mr.  
23 Donnellan. You know, before we get into the Order to Show  
24 Cause, I just want to see if there is any way of resolving  
25 the issue via this letter of credit that now has been black

1 lined back to you Mr. Giardino.

2 MR. GIARDINO: Well, I do think that perhaps we are  
3 making some progress. I think that we have no issue at all  
4 having that letter of credit issue to support the payment of  
5 rent, additional rent or any other charges.

6 The concern that we have about the black line that  
7 Mr. Donnellan has submitted, is that it purportedly stands  
8 for any default. Of course this lawsuit is about alleged  
9 defaults and a dispute about the defaults.

10 So the concern would be if we grant a letter of  
11 credit, it stands in the place of the landlord's unilateral  
12 claim that there is a default, we are bringing them in,  
13 these very issues are in dispute.

14 So, I have no issue granting this letter of credit  
15 to perform the way the \$1.6 million rent security account  
16 was intended to perform.

17 I am concerned that by expanding it to any alleged  
18 defaults, we are not serving that purpose. And I don't know  
19 where we end up, once we have that letter of credit.

20 THE COURT: Everything else you have no problem  
21 with?

22 MR. GIARDINO: If that letter of credit in the form  
23 that Mr. Donnellan has proposed is limited to section 3.2,  
24 rent payments, we will issue, we will get that letter of  
25 credit issued.

1 THE COURT: Rent, additional rent.

2 MR. GIARDINO: Rent, additional rent. Any charges  
3 due under Section 3.2, so. We have no issues with that at  
4 all. That's what we propose to that.

5 MR. DONNELLAN: Your Honor, the section of the  
6 lease that provides for the \$1.6 million in cash is not  
7 limited to security for rent or additional rent.

8 I copied the language word for word out of the  
9 letter of credit agreement that they did not do. It uses  
10 the words event of default. Which is a defined term in the  
11 lease and which is the term that's used on the letter of  
12 credit.

13 THE COURT: We can't come to an agreement, so I  
14 will just decide the Order to Show Cause. That's all.

15 All I am deciding right now is the TRO aspect of  
16 it. And I have read all the papers and I basically come  
17 down on the fact that I don't think Mr. Jozefovic has  
18 established a right to a TRO relief because I think that he  
19 had the obligation to put the 1.6 million in the landlord's  
20 rent account which did not occur and they have been trying  
21 for some time now to enforce that right. It's limited to  
22 the 1.6.

23 It pains me because I think that this is just going  
24 to make a bigger mess of things. So I do wish that the  
25 parties could come to some kind of an agreement with regard

1 to the letter of credit and not cause I think a pretty bad  
2 domino effect, but I can't force the parties to agree.

3 And based on the papers that are before me, I don't  
4 think Mr. Jozefovic has established a likelihood of success  
5 on the merits with regard to his arguments that, you know,  
6 that there wasn't a valid assignment here of his membership  
7 interest. You know, the argument about the operating  
8 agreement, not permitting it, is overwritten by the fact  
9 that we have both the company's signing you know the pledge  
10 agreement, all of the members signing that other document  
11 which clearly was in furtherance of that.

12 So, every single member was in the know and in  
13 agreement that there would be this pledge with regard to Mr.  
14 Jozefovic's interest in Waterview to secure the obligations  
15 under the lease, which -- and the real obligation here where  
16 there has been a default and he could have prevented all of  
17 this from happening was the 1.6 million, once that got put  
18 in the landlord security deposit that right to that, to  
19 foreclose on that membership interest goes by the way side.

20 So, Mr. Donnellan, I hope that you're not going to  
21 go beyond the 1.6 million in the sale tomorrow, if it  
22 happens. In terms of the bank, I have read everything  
23 you've submitted to me. And again, while you may have maybe  
24 a security at this point with regard to your interests, I  
25 can't invalidate what was transferred, you know, back in

1           whatever, 17. And at that point what was transferred was an  
2           intangible.

3                       They totally know that they are subordinate to you,  
4           that, you know, I know you're concerned because it is going  
5           to create all kinds of other defaults, but as long as we get  
6           more than your 3 million on your loan, I don't know how much  
7           is outstanding and more than, you know.

8                       I mean really all you care about is getting at  
9           least 3 million tomorrow, right. If you get your three  
10          million even if there is a default you are whole, right, the  
11          bank is whole?

12                      MR. MALATAK: I just, I assume so. I just don't  
13          know, your Honor, because I don't know what the indebtedness  
14          is. And this, I believe this is cross defaulted against  
15          other obligations.

16                      THE COURT: I can't prevent them from exercising  
17          their right.

18                      MR. MALATAK: Could I be heard?

19                      THE COURT: Sure. You can be heard and I have read  
20          everything. And I have read that bankruptcy case again and  
21          I just don't believe that this is not a commercially  
22          reasonable sale for them to exercise their right to  
23          foreclose on this intangible membership interest which was  
24          intangible at the time that it was transferred to them.

25                      MR. MALATAK: But, your Honor, I think that, at the

1 time that it was transferred to them, it was an intangible  
2 interest. But it's no longer an intangible interest. And I  
3 don't think you can put that Jeannie back in the bottle.

4 Now, for example, the code does provide that, you  
5 know, an LLC can opt in to Article 8 and in which case --

6 THE COURT: I know. But all he did, when he gave  
7 that you interest, he was breaching everything that he had  
8 agreed to do with White Plains Health Care, he had agreed  
9 with White Plains Health Care under that collateral and  
10 pledge agreement that he wouldn't be doing what he did with  
11 Metropolitan Bank, so.

12 MR. MALATAK: Well, I mean that's a separate issue.

13 THE COURT: Well, it is an important issue, it is  
14 an important issue. I mean the bottom line is he has been  
15 pledging the same collateral to I don't know to how many  
16 people or how many entities.

17 MR. MALATAK: I apologize, I cut you off.

18 THE COURT: It's okay, go ahead.

19 MR. MALATAK: You know at this point we are not  
20 dealing with a general intangible any more. We are dealing  
21 with a security interest.

22 THE COURT: Why does it completely eviscerate what  
23 was transferred to them? Why is that completely  
24 eviscerated? I don't see how it can be.

25 MR. MALATAK: I am not saying that they no longer



1 have an interest, but to the extent that they have an  
2 interest, it is an interest in the security, not a general  
3 intangible which does not exist any more because of the --

4 THE COURT: I will let the Second Department decide  
5 that. I am not satisfied.

6 MR. MALATAK: Well, in that regard, would your  
7 Honor then, you know --

8 THE COURT: I am going to strike out the TRO and  
9 you guys can run down to the Appellate Division. That's why  
10 I am trying to work this out. I would love to be able to  
11 work it out so all this goes by the way side and we don't  
12 have this horrible domino effect happening tomorrow.

13 But I can't bring the parties to an agreement for  
14 whatever reason. I've tried. If we had dealt with this a  
15 long time ago, we wouldn't be under the gun.

16 We didn't deal with it a long time ago, even though  
17 I tried to have everyone get that 1.6 million put somewhere  
18 where the plaintiff felt where what they had bargained for  
19 was there and there was security there until the end of this  
20 case. And nobody took me up on that and now we are where we  
21 are.

22 And if they can come to an agreement on this, which  
23 I think that they should, with regard to this letter of  
24 credit, then that would be great.

25 But I can't force them to come to an agreement and

1           thereby moot this whole Order to Show Cause. I mean this  
2           whole sale tomorrow.

3                   MR. MALATAK: Would you be amenable to a short stay  
4           pending appeal?

5                   THE COURT: No, I am not. You guys run to the  
6           Appellate Division. This is scheduled for tomorrow. They  
7           have expended a lot of money, this is the second time that  
8           they have expended a lot of money trying to get the sale to  
9           happen.

10                   So, I am not going to stay it. You can run to down  
11           to the Appellate Division right now and you will probably  
12           get a stay, which is fine. I'm not going to feel bad about  
13           it. I am doing what I think is right and I don't think that  
14           the bankruptcy case that you gave me is authoritative in  
15           this situation.

16                   So, it's just totally distinguishable. That's  
17           where I fall on this.

18                   You didn't give me any other authority, I know I  
19           read the UCC provisions you gave me and everything else and  
20           I appreciate that. But what was transferred to them was an  
21           intangible and how they can't somehow then enforce their  
22           right with this intangible because Mr. Jozefovic breached  
23           his agreements with them and gave another entity a superior  
24           lien, the only reason your lien is superior because they  
25           messed up and didn't file their UCC financing statement.

1 That's where I land on this.

2 I totally get it, that you're going to run to the  
3 Appellate Division and you need to do it and that's why I am  
4 trying to give you time to do that. Okay?

5 MR. GIARDINO: Your Honor, if I may, I received  
6 Mr. Donnellan's counter letter of credit language certainly  
7 for joint -- I haven't even had a chance to present it to  
8 the client.

9 THE COURT: I understand that, Mr. Giardino, I have  
10 to give people time to run to the Appellate Division.

11 MR. GIARDINO: Okay.

12 THE COURT: So you guys can keep trying to sort it  
13 out and I hope you do, I hope you sort it out, because I  
14 don't think what happens tomorrow is necessarily the right  
15 way to go.

16 But, I'm not staying it. Okay.

17 Anybody else? So basically it is fully submitted  
18 for today, right?

19 MR. SPOLZINO: Correct your Honor.

20 THE COURT: So today's return date nobody needs to  
21 put in any more papers, right, we are all done?

22 MR. MALATAK: Yeah. You received the bank's papers  
23 this morning?

24 THE COURT: Yes, there is a certificate, you show  
25 that there is a certificate, right.

1 MR. MALATAK: Yes.

2 THE COURT: Got it. All right. Sorry, I couldn't  
3 help everybody. I tried.


4 Take care.

5 MR. GIARDINO: Thank you, your Honor.

6 MR. MALATAK: Thank you.

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8 Certified to be a true and accurate transcription  
9 of the stenographic notes.

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11 Elizabeth DeMasi, CSR

12 Senior Court Reporter

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